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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Petition of SBC Communications Inc.)
for Forbearance of Structural Separation)
Requirements and Request for Immediate)
Interim Relief in Relation to the Provision of)
Nonlocal Directory Assistance Services)

CC Docket No. 97-172
DA 99-2345

COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM, INC. (MCI WORLDCOM) files the following comments in response to SBC Communications Inc.'s (SBC) Petition for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services (the Petition) filed November 2, 1999.

I. The SBC Petition for Forbearance from § 272

In its Petition, SBC requests that the Federal Communications Commission (Commission) grant it forbearance¹ from the requirements in § 272 of the Act² so that it may provide nonlocal directory service (NDA) on an integrated basis with its provision of local directory assistance services. SBC requests similar relief to that granted to US West in the Commission's *NDA*

¹ Pursuant to Section 10 of the Communications Act. 47 U.S.C. § 160.

² 47 U.S.C. § 272.

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Order.³ As such, SBC is seeking forbearance from § 272 for its affiliates Ameritech, Southwestern Bell Telephone Company (SWBT), Pacific Bell (PB), and Nevada Bell (NB).⁴

II. Incidental InterLATA Services Pursuant to Section 271(g)(4)

The Commission's *NDA Order* expressly provides that a BOC is not in violation of §271 only if its provision of NDA service is the equivalent of an incidental interLATA service pursuant to § 271(g)(4). The Commission concluded that "§ 271(g)(4) permits a BOC to offer incidental interLATA services [such as NDA] only when it uses its own facilities."⁵

SBC claims that NDA in the Ameritech states is in compliance with § 271(g)(4) because, unlike US West, Ameritech already uses its own information storage facilities to provide NDA.⁶

With respect to SWBT and PB, SBC claims that like the US West arrangement, SWBT and PB, at the time of the release of the *NDA Order*, did not use its own information storage facilities for the provision of a national directory listings service.⁷ SBC alleges that it is in the process of purchasing from Nortel a national directory listing service information storage facility in order to comply with § 271(g)(4) for the provision of NDA by SWBT and PB. We believe that until this acquisition and transition is completed, SWBT and PB should be prohibited from

³ *Petition of US WEST Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, CC Docket No. 97-172 (rel. September 27, 1999) (*NDA Order*).

⁴ SBC is not seeking forbearance for its provision of NDA in the SNET territory because those services are provided by an affiliate, SNET-Diversified Group, Inc. (SNET-DG), and as a result, it argues, SNET is not subject to the requirements of §§ 271(b)(2) and 272(a)(2)(B)(ii).

⁵ *NDA Order* at ¶23.

⁶ *Petition* at 2.

⁷ *Petition* at 3.

providing NDA.

The Petition also should not be granted until SBC provides additional information to the Commission regarding the purchase of the information storage facility from Nortel, its vendor of choice, to allow the Commission to fully determine that SBC's provision of NDA satisfies § 271(g)(4). It is not enough that SBC notify the Commission regarding the date the purchase is completed,⁸ SBC should also provide information providing that SBC actually owns the facility in order to meet the requirements of § 271(g)(4). SBC should also disclose the terms of the purchase so that the Commission can ensure that the purchase does not include preferential treatment by SBC for Nortel if SBC provides it access to its directory listings. Without such a review, the Commission's determinations in the *NDA Order* regarding the manner in which a BOC may provide nonlocal directory assistance as an incidental interLATA service under § 271(g)(4) is rendered meaningless. They can be satisfied without certification and with vague promises of compliance.

SBC admits in its Petition that it has been providing NDA service for months without owning the information storage facilities.⁹ Based upon this admission, this Commission should sanction SBC for its violation of § 271 and the *NDA Order* from the date it initiated service until the date on which it is able to demonstrate its compliance with the law.

III. Current Violations of § 272

SBC should also be sanctioned for violating § 272 as a result of its provision of nonlocal

⁸ Petition at 3, n.7.

⁹ Petition at 3 and 6. SWBT, for example, launched its NDA service in April 1999.

directory assistance without the establishment of a separate affiliate.¹⁰ SBC, fully aware that its provision of nonlocal directory assistance services without the use of a separate affiliate could have been deemed a violation of law, chose to ignore this possibility by doing nothing. SBC had an opportunity to file a request for forbearance at the same time as US WEST filed its Petition for Declaratory Ruling regarding nonlocal directory assistance over two years ago (July 17, 1997) and chose not to do so. Instead, SBC did not file its Petition until July 2, 1999.¹¹ Therefore, SBC should be sanctioned for its violation of § 272 from the date it initiated service until it provides evidence that it has complied with the law.

IV. Forbearance Under Section 10

SBC contends that the Commission must look at the standards contained in § 10(a) of the Act, when considering whether to grant forbearance from a particular section of the Act. Section 10(a) requires forbearance, if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

SBC's simple reliance on the Commission's recent decision, granting forbearance to US

¹⁰ Indeed, this Commission has already determined in a separate complaint proceeding that Ameritech, an affiliate of SBC, has been violating § 272 by providing NDA without establishment of a separate affiliate. See *In the Matter of MCI Telecommunications Corp. v. Ameritech Operating Companies and Ameritech Communications Inc.*, Memorandum Opinion and Order, File No. E-97-19, DA 99-2479 (Rel. November 8, 1999).

¹¹ SBC's original was filed on this July 2, 1999, but withdrawn by Motion of SBC on November 2, 1999. The which is subject of these comments was filed November 2, 1999.

WEST, to obtain forbearance is misguided. SBC's demonstrated track record of failing to provide directory assistance services and information to competitors means that its request for forbearance in this instance must be denied.

A. Enforcement of Section 272 is Necessary to Ensure that the Provision of NDA Services are Just and Reasonable.

SBC alleges that enforcement of the requirements in Section 272 is not necessary to ensure that NDA services are just and reasonable.¹² MCI WORLDCOM's experience with SBC leads to a different conclusion.¹³

In the *NDA Order*, the Commission expressed concern that the BOCs not be in a position to discriminate against competing providers of NDA services. For this reason, the Commission concluded that if US West uses the directory listing information of the customers of independent and competitive LECs operating in its region in its provision of nonlocal directory assistance, it must make such information available to unaffiliated entities.¹⁴ SBC acknowledges its violation of this Commission's decision in California because of PB's refusal to provide independent and

¹² Petition at 5.

¹³ The Commission should also consider that such discriminatory and unreasonable acts as described by MCI WORLDCOM will likely be exacerbated by SBC's control of over 1/3 of the access lines in the country, as a result of its recent merger with Ameritech. The increased concentration and possible spread of "worst practices" highlight the need for Commission enforcement of the existing protections in the Act, including those found in § 272, against acts of discrimination and unreasonable conduct.

¹⁴ *NDA Order* at ¶ 37. This same concern also led the Commission in the *NDA Order* to refuse to forbear from applying the non-discrimination requirements found in § 272(c)(1). The Commission explained that even after a § 271 application has been granted, the BOCs retain the incentive and ability, through control of local exchange and exchange access facilities and services, to engage in anticompetitive cost-shifting and discrimination which is exactly what § 272 seeks to prevent. *NDA Order* at ¶ 55.

competitive LEC listings.¹⁵ PB hides behind a California Public Utilities Commission (CPUC) order, which SBC claims prohibits PB from releasing listing information it obtained from independent and competing LECs without the authorization of the underlying carrier.¹⁶ Incredibly, and as a glaring example of discriminatory behavior, PB provides these same independent listings to GTE.

Moreover, in the SWBT states (except Texas), SWBT is attempting to charge a grossly inflated price for directory assistance listings despite the statutory requirement that it charge cost-based, nondiscriminatory prices. Interestingly, the Public Utility Commission of Texas (Texas Commission) found that the cost-based rate is yet a fraction of the price SWBT is charging its competitors. In addition, SWBT revealed in a publicly-available cost study that it costs SWBT \$.0011 to provide each directory assistance listing, but that SWBT charges competitors \$.0585 per listing.¹⁷ Although SWBT claims that this is the same rate it imputes to itself, we believe that SWBT is abusing its monopolistic control of the information to charge prices that are not cost-

¹⁵ Petition at 4.

¹⁶ Id. SBC's unwillingness to comply with the *NDA Order*, arguably because of the CPUC order, may render this matter ripe for preemption. Ironically, PB attempts to describe its role with respect to the CPUC order as a passive one, where it played no part. This could not be further from the truth. The original CPUC order only discussed competitive LEC listings and PB expanded it to cover independent listings. Also, in a recent filing in a related docket (CPUC Decision 99-08-028 regarding PB's NDA tariff), PB argues that there are alternative sources to PB for directory assistance listings which are available to competing carriers in an effort to sidestep its obligations under the *NDA Order* and the Act.

¹⁷ See *Petition of MCI Telecommunications Corp. for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996, Arbitration Award*, Public Utility Commission of Texas Docket No. 19075 (August 13, 1998) at p. 11-14 (citing SWBT cost study).

based. This anticompetitive behavior runs afoul to the Act's requirements.¹⁸

SWBT also place restrictions on MCI WORLDCOM's use of the directory assistance listings data which it does not place on its own use of directory assistance. For example, SWBT restricts MCI WORLDCOM's use of directory listings to retail use only.¹⁹

Further, Ameritech has refused to provide the same directory assistance listing information that its own operators use. The information they make available to competitors through its "raw data" product does not contain complete listing information, as MCI WORLDCOM has confirmed in its testing of the product. Ameritech also does not provide independent listings to competitors in violation of the Act and the *NDA Order*.

SBC attempts to eliminate the need for forbearance for SNET by stating that its NDA services in that region are provided by a separate affiliate and interexchange carrier, SNET-DG, which is exempt from the requirements of §§ 271(b)(2) and 272(a)(2)(B)(ii). It must be noted, however, that SNET has continually denied MCI WORLDCOM access to its directory assistance listings in bulk since 1997. To the extent that the separate affiliate, SNET-DG, has complete access to this same information from SNET, this constitutes a discriminatory practice which violates § 251(b)(3) of the Act.

B. Enforcement of Section 272 is Still Necessary for the Protection of Consumers and to be Consistent with the Public Interest

In the Petition, SBC contends that because competition for NDA services "is fierce", this

¹⁸ 47 U.S.C. § 251(c)(3). By contrast, MCI WORLDCOM provides its directory listings to the BOCs at no charge, because the customers benefit by being included in these listings.

¹⁹ This issue has been appealed in Texas and was remanded by the Federal District Court to the Texas Commission for further review.

effectively precludes any carrier from charging unreasonable or excessive rates for its NDA services, and thus, the application of § 272 to SBC's NDA service is not necessary for the protection of consumers.²⁰ This statement is simply inaccurate. It has been demonstrated that SBC in the SWBT region is already charging unreasonable rates to competitors for its directory listing information. Further, PB and Ameritech will not provide all of its independent and CLEC listing information to competitors, as required by law. Therefore, consumers cannot always be assured of receiving accurate information at reasonable rates from other providers as a result of SBC's anticompetitive behavior.

SBC also alleges that the final criterion in §10 is met because the Commission may consider in its public interest analysis whether the forbearance from enforcing the provision will promote competitive market conditions.²¹ Aside from the fact that the above examples call into question whether "competitive" market conditions currently exist for NDA services, the public interest inquiry cannot end there. As demonstrated above, SBC has been providing its NDA services for some period of time in violation of §§ 271 and 272 and has engaged in some discriminatory and unreasonable actions with respect to its provision of directory listing services and information to its competitors. These violations and anticompetitive practices are contrary to the public interest and overwhelmingly weigh against any finding that forbearance from the separate affiliate requirement is warranted here.

V. Request for Forbearance for Future Nevada Bell NDA Service is Premature

Incredibly, SBC requests that the Commission include NB in its grant of forbearance to

²⁰ Petition at 6.

²¹ Petition at 7.

provide NDA without a separate affiliate even though SBC reveals that NB is only likely to offer this service in the future.²² There are no specific plans regarding how such a service would be structured, only vague references to the fact that NB's future NDA service may use PB or Ameritech databases. The Commission should decline to grant this request. SBC cannot reasonably expect the Commission to determine whether to forbear from applying a section of the Act based on vague references to implementation processes for this potential service.

VI. Conclusion

The Commission should not grant the requested relief until SBC has certified and provides evidence that it has complied with the law. Until such time, SBC should be prohibited from providing nonlocal directory assistance service. Additionally, the Commission should sanction SBC for providing nonlocal directory assistance services without owning the information storage facilities in violation of § 271. Similarly, the Commission should sanction SBC for its provision of NDA without a separate affiliate in violation of §272. Finally, analysis of the forbearance factors provided in §10 of the Act must lead the Commission to conclude that forbearance is wholly

²² Petition at 4.

inappropriate in this instance. SBC and its affiliates' unwillingness to provide directory assistance services and listing information in a manner which is not discriminatory, or unjust and unreasonable provides an additional basis for the Commission's denial of the requested relief.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa R. Youngers". The signature is written in black ink and is positioned above a horizontal line.

Lisa R. Youngers
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Dated: November 29, 1999

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that on this twenty-ninth day of November, 1999, I caused by first class United States Postage, a true and correct copy of MCI WorldCom, Inc.'s Comments concerning SBC Communications, Inc.'s Petition for Forbearance to be served on the following:

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